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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,927	02/20/2004	Ronald A. Fleming	066438-5001US	7276
9629 7590 04/13/2009 MORGAN LEWIS & BOCKIUS LLP 1111 PENNSYLVANIA AVENUE NW WASHINGTON, DC 20004				
EXAMINER				
ANDERSON, JAMES D				
ART UNIT		PAPER NUMBER		
1614				
MAIL DATE		DELIVERY MODE		
04/13/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/783,927

Applicant(s)

FLEMING ET AL.

Examiner

JAMES D. ANDERSON

Art Unit

1614

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 March 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1, 7, 8, 12, 13 and 65

Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____

/Ardin Marschel/
Supervisory Patent Examiner, Art Unit 1614

/James D Anderson/
Examiner, Art Unit 1614

Continuation of 5. Applicant's reply has overcome the following rejection(s): 35 U.S.C. 112, 1st Paragraph rejection of claims 1, 7-8, 12-13, and 65.

Continuation of 11. does NOT place the application in condition for allowance because: The Final rejection of claims 1, 7-8, 12-13, and 65 as being unpatentable under 35 U.S.C. 103 over Kucera et al. in view of Holmes et al. is maintained for the reasons of record. Applicant's arguments have been carefully considered but they are not deemed persuasive. Applicant argues that the Examiner's basis for the present rejection is inconsistent with the current law on obviousness. Applicant argues that the Examiner has provided no motivation to modify the disorders disclosed in Kucera to obtain the claimed invention. This is not persuasive because one skilled in the art need not "modify the disorders" disclosed in Kucera to obtain the claimed invention. The invention of Kucera relates to the treatment of viruses with compounds of Formula I which are taught to attach to the cell membrane and thus are particularly effective against infections cause by membrane-containing or envelope-containing viruses (col. 9, lines 42-45). While Kucera et al. exemplify the treatment of herpes viruses, one skilled in the art would recognize that the invention of Kucera et al. is applicable to any envelope-containing virus. As such, one skilled in the art would have been imbued with at least a reasonable expectation that administration of a compound of Kucera et al. to a host infected with coronavirus, an envelope-containing virus as evidenced by Holmes, would be effective to treat the coronavirus via attachment of a compound of Kucera to the cell membrane as taught in Kucera. There is no "modification" of Holmes necessary to arrive at the claimed invention as it relates to the virus being treated. The fact that viral envelopes are "typically derived from portions of the host cell membranes" but include some viral glycoproteins has no bearing on the present rejection. For example, it is noted that the instant specification and originally filed claims also contemplate the treatment of herpes virus as also explicitly disclosed in Kucera et al. As such, if it is "generally accepted" that it is from the host cell that the lipids in virus envelopes are derived as stated by Applicant, then one skilled in the art would expect that if the compounds of Kucera are effective to treat herpes virus in a host then they would also be effective to treat other envelope-containing viruses in the same host.